

SOUTHWESTERN EXPLORATION ASSOCIATES

IBLA 77-550

Decided December 28, 1977

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting untimely filed notices of mining claim recordation. NMC 7897 through 7982.

Affirmed.

1. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Recordation

A mining claim located after October 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744) has not been filed within 90 days from the date of location is void, and no force and effect can be given to a notice of recordation filed after the 90-day period.

APPEARANCES: Thomas E. Waldrip, Jr., Geologist, and Julian C. Smith, Jr., Esq., Smith and Gamble, LTD, Carson City, Nevada, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

By decision dated August 5, 1977, the Nevada State Office, Bureau of Land Management (BLM), refused to accept for filing the above-designated lode mining claims because of noncompliance with 43 CFR 3833.1-2(b) 1/ which provides as follows:

1/ Subpart 3833, published in 42 FR 5298-5302, on January 27, 1977, implements section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701). Section 314 requires that within specified periods of time unpatented mining claims be recorded and information concerning assessment work or a notice of intention to hold a claim be filed with the Bureau of Land Management.

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

Appellant's claims are situated in the Ellendale Mining District, Nye County, Nevada, and were located on May 4, 1977. However, Appellant's notices of location did not reach the BLM State Office until August 4, more than 90 days later.

In the statement of reasons Appellant explains that on July 20, 1977, it sent the notices of location to the Nye County Recorder's Office. The notices were received in that office on July 22, were processed and subsequently returned to Appellant on August 3. Appellant concedes that it failed to meet the time requirement established by 43 CFR 3833.1-2(b). It asserts, however, that such failure was due to lack of expeditious processing by personnel of the Nye County Recorder's Office. Appellant asks the Board to waive the 90-day requirement and to grant an extension of time within which to file its notices of location.

Appellant argues in the alternative that location is not complete until a location certificate and map of the claim are filed in the County Recorder's Office. Since these filings occurred on July 22, Appellant contends that the 90-day period began to run on that date.

[1] The Federal Land Policy and Management Act, 43 U.S.C. § 1701 (1976), and the regulations which implement it contain no provisions allowing for a waiver of the 90-day requirement or for the granting of extensions. On the contrary, the consequences of failing to timely file notices of location are clearly stated in 43 CFR 3833.4(a): "The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claims, mill site, or tunnel site and it shall be void." It is apparent from the statement of reasons that Appellant was fully aware of the content and consequences of the regulations. Yet, it permitted over two-thirds of the filing time to elapse before sending its notices to the Nye County Recorder's Office, and is therefore in a poor position to shift its own lack of diligence to that office.

The argument that the 90-day period began to run on July 22, 1977, when Appellant's notices of location were filed in the County Recorder's Office is also without merit. Location of a claim is a distinct event whose date is required to be entered on the location certificate under the Nevada Statutes, NRS 517.050 1(c). The statute itself utilizes the date of location as the onset of a 90-day period within which recordation must occur. Recordation is an event wholly distinct from location, and the Nevada Statutes offer no support for Appellant's argument. The request for oral argument is denied.

Our conclusion is consistent with the view of the Solicitor in M-36889, May 17, 1977. Since the notices of location were not filed with BLM within 90 days from the date of location as required, they cannot be given force and effect and the claims are void. The claims may be relocated and the appropriate instruments may be refiled within the time period prescribed by the Act and regulations, if the lands in issue have not been otherwise appropriated or withdrawn.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

